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pH 8.5



THE LAW OF THE LAND

ADDRESS

DELIVERED BEFORE THE

EDINBURGH PHILOSOPHICAL INSTITUTION

AT THE OPENING OF ITS SESSION

November 1886

BY

E. J. PHELPS

London:
HARRISON & SONS, ST. MARTIN'S LANE.
Printers in Ordinary to Her Majesty.

1887.

IN the Magna Charta of King John, the most significant expression in its most celebrated clause, appears a phrase familiar now, unknown till then, "*per legem terræ*"—by the law of the land. It indicates there, at once the criterion and the bulwark of the liberties of Englishmen. And with its context, introduces for the first time into the theory of civil government, and crystallizes into language not destined to perish, the idea long moulding and shaping in the un-

lettered Saxon mind, that human rights are the foundation, and not the concession, of human authority.

Whose phrase it was, we do not know. It was inscribed there by a forgotten hand. It has not been rare in the growth of the English tongue, that some new form of words, struck as this was out of the heat of a critical time, and compressing as this does a great thought into small compass, has entered at once and for always into the general speech of men. But it is the meaning rather than the origin of the words I have quoted from the Great Charter, that I desire to consider. They are repeated oftener than they are understood. It may be useful, possibly, in this day of many novelties, to recur to their original significance,

and to trace their relation to the political fabrick which is the common inheritance of all our race.

I ask your attention therefore, to some observations, of necessity very general and very brief, upon "THE LAW OF THE LAND."

The term is often made use of in a vague way, as including all the law which has force or is administered in the country. I do not so understand it. I regard and shall employ it as embracing only that which is fundamental. I conceive the law of the land to be the law that runs with the land, and descends with the land. Not the general mass of changeful legislation, or judicial decision "perplexed in the extreme;" but that higher law under which legislation

itself obtains its authority, and courts their jurisdiction.

It was in this sense, beyond doubt, that the words were employed in Magna Charta. Otherwise the guarantee of personal liberty there contained would altogether lose its force. It would no longer stand declared that the liberty of the subject shall be inviolable by government; but only that it shall find its measure and its superior, in whatever may have the form or force of law for the time being. And the charter would merely have served to re-establish the old system of arbitrary power, which it was designed to put an end to.

In the written constitution of the United States, this distinction is clearly brought out. The fundamental personal

and political rights which may not be infringed, are enumerated and set forth, and are placed beyond the reach of any department of the government. The domain of constitutional law is thus completely separated from that of statute law.

The unwritten constitution of Great Britain, as universally understood, is of the same effect. Though its ultimate construction is entrusted to Parliament, that body is equally bound to refrain in legislation from infringement of constitutional rights. It has never in recent times disregarded the limit thus imposed upon its action.

It is to be remembered therefore, as the starting point necessary to a clear comprehension of the law under which we live, that it consists of two

great component parts, differing widely in their character, the one raised upon the other; the law that changes, and the law that does not change. The unchangeable law is that which protects the necessary and superior rights of man.

The theory upon which our system of government rests, is that mankind possesses certain natural rights, usually described as those of life, liberty and property, indispensable to human freedom and happiness. That these rights are not derived from, but are antecedent to government, which is instituted for their maintenance as its first and principal object. That it can never be allowed therefore to infringe or disregard them, nor to fail to offer redress for their invasion. And that

when it ceases to respect and uphold them, the obligation of allegiance terminates, and the right of revolution begins.

These constitutional principles are of perpetual duration, and of perpetual authority, because the natural rights they maintain are of perpetual obligation. No change of time or circumstance, no new discovery in political science, no modification of the forms of government, can affect their validity, or restrict their control.

The principles of law which I have thus endeavoured to state, belong exclusively to the Anglo-Saxon race. They are the distinctive characteristic of the common law of England, which is likewise the common law of the English speaking race everywhere.

In no other system are they to be found.

They were the offspring of no man's creation, the product of no man's brain. Through centuries of vigorous Saxon life, through much oppression and violence, through the rise and fall of kingdoms, and wars and tumults innumerable, the great idea that underlies free government slowly ripened into perfection. It found its first definite and permanent expression in Magna Charta, and became there the foundation of English law, to distinguish it thenceforth from all other law, and to conduct the people to whom it belonged, and their descendants, to a prosperity which the world had not seen before.

I do not mean to say that under no

other system of government are the personal rights maintained. They may be upheld to a greater or less extent, and possibly to the full extent, under others. A wise and humane despot might promulgate a code of laws which should afford as complete a security to these rights, while it lasted, as the law of England does. But under no other theory than ours, can they be assured of a permanent protection. In governments based upon different principles, personal rights, so far as they exist, are derived from the governing power, which may therefore at any time abridge them or take them away. Human experience has shown that rights which are thus conferred, are sooner or later lost. It is only

when they are conceded to be inviolable, and when the observance of them by government becomes the condition of its existence, that they ever can be permanently safe.

There is still another branch of the constitutional law, which is practically unchangeable in its character. To the protection of the cardinal rights, it has been found that certain political institutions and certain juridical principles and processes are necessary. The division of government into three independent branches, the executive, the legislative and the judicial; representation in Parliament; the maintenance of courts of equal justice, the writ of habeas corpus, the trial by jury: these and other principal features in the administration of civil authority,

are not of themselves essential to human enjoyment. They are only so many devices shown by experience as well as by reason to be indispensable to the just protection of the rights that are essential. The fundamental law divides therefore into two branches, the principles that define human rights, and the machinery established for their security.

Upon this foundation of constitutional principles, is reared that other portion of the general structure of the common law, which I have referred to as the law that is subject to change. It is deduced from these principles, by their gradual application to the various relations of the individual to his fellows, and to the community. As civilization becomes

more exigent, society more artificial, industry and business more various and complicated, and property more intricate in its forms and titles, the simple principles in which law has its origin require to be developed and extended. New relations spring up, new regulations are found necessary, fresh remedies have to be sought for. To meet these requirements the law constantly advances, and becomes perfectly adequate. All law that is worth anything comes by growth, not by arbitrary creation. It arises out of an increasing and ever varying necessity. Its movement is constant, sometimes in the wrong direction it is true, but in the long run generally in the right direction. When law ceases to grow, society ceases to advance.

It would be an interesting topic, but outside the line of my remarks, to trace more particularly the nature of the growth of the body of the common law, from its root and foundation, the law of the land. Out of it arise numberless legal rights, changeable in their character, more or less important and desirable, not absolutely necessary. They are all only provisions for carrying out in the numerous relations of life, the enjoyment of the cardinal rights of life, liberty and property, in the liberal acceptation of those terms.

Life, which includes security of person, of character and of health; liberty, including the right to go and to come and to stay, to enjoy the family relations, to pursue honest industries and innocent recreations, and to exer-

cise freedom of opinion, of worship, and of speech; and private property in all its forms and conditions: these are what the law of the land secures to the subject. And the province of the general body of the law in its vast elaboration of detail, is only to increase the security, to diminish the interruptions, to improve and extend the enjoyment of these fundamental and indispensable rights.

When this is accomplished, the power and province of civil authority are exhausted. Human law can do no more for man. All that remains to make life happy and prosperous, must come, under Providence, from personal conduct and exertion, for which the field is thus opened and protected.

I have been thus elementary, and I fear at the same time wearisome, in order to point out as clearly as I can, just what it is that the law of the land secures; and to emphasize the distinction between constitutional rights, and merely legal rights. The first, underlying government, and not to be infringed by its power. The latter, derived from government, held subject at all times to its action, and liable to be modified or withdrawn.

The line which divides these two classes of rights, is the one which defines and limits the power of the majority. In respect to merely legal rights, that power is ultimately supreme. If inconvenience, hardship or injustice result from its exercise, they can only be corrected through the law-making

power itself. But over constitutional rights the popular voice has no control. Majorities are but an agency of government, which in all its agencies is subject to constitutional limits. It is the failure clearly to observe this distinction, that is at the bottom of some movements I shall refer to hereafter.

What then is civil liberty, and what is free government? We know that we enjoy them; we boast of them; we value them. But after all, what do they exactly consist in?

Civil liberty is simply the enjoyment of the fundamental rights in their full extent. And free government is the government appropriate in form, that secures their permanent protection to all men alike. Not by a security dependent upon the will of the govern-

ing power, but by one inherent in the government itself, and co-extensive with its existence.

It is a very common mistake to suppose that the freedom of government consists in its form, and not in its substance. In the means that should maintain freedom, rather than in the freedom itself. Forms of government of whatever sort are only forms. The true test is not in the nature of the machinery, but in the result that comes of it at last. The machinery, in and of itself, is only a perpetual burden; we should gladly dispense with it, if human nature was good enough to do without it. It is but a means, not an end.

That a form of government in which the ultimate power is in the people is

necessary to the maintenance of freedom, is true. That such governments are necessarily free, is not true. They have been usually free because they have not been perverted from their purpose; not because it is impossible that they should be. The opposite to free government is arbitrary power. That might be administered by a despot, or by a class. Of a despotism there is at this day and in our race no danger. Of attempts at establishing class government, there is danger. When in any form of popular government, equal protection of the fundamental rights or of any of them ceases, that government, though its form remains, is no longer free, and becomes an arbitrary authority unjustly exercised by one class over another. By what

means this comes to pass is immaterial. Arbitrary power may exist in a multitude, as well as in an emperor, in a democracy, as well as in an oligarchy. It may be the government of the few, or the government of the many. It is not the less class government because the class that governs is the lowest class; nor is there any advantage in government by the lowest class over government by the highest, if there is to be class government at all. No class government can be free, because the essence and indispensable condition of free government is equality of rights in all classes. And the object and necessary result of class government, is to attack the just rights of one class, for the benefit of another.

When a popular form of government thus ceases to be free, and becomes a class government, in which fundamental rights are not equally protected, it extinguishes itself. Anarchy soon follows. And a new system of arbitrary power arises out of the ruins, dictated by the necessities of society.

Free government or civil liberty then, is in the end simply the maintenance, by its people, of those fundamental and therefore constitutional rights that are declared by the law of the land. And to the existence of those rights two conditions are essential—first that they should be inviolable—second that they should be equal. If not inviolable they are not rights, but only enjoyments on sufferance; if not equal, they are but the

privilege of a class, whatever that class may be.

Of the three great divisions of natural rights to which I have referred, the first two are not in these days challenged. It has not been proposed in our time, to place either life or liberty at the disposal of any other power than that of the regular administration of justice. No reformers have recently appeared, who desire to improve society by taking the lives, even of those guilty of the offence which history shows to be least pardonable by mankind, that of differing from the majority in opinion. Thus far at least the law of the land stands unquestioned. But in various parts of the world at the present time, in many forms, under many theories, and upon widely

differing propositions, the right of property has been brought into question, has given rise to violent discussion, and has become sometimes the subject of serious disturbance.

In some quarters, it takes the form of active opposition to all private property, and to all government. Such propositions are only appropriately met by the bullet and the rope.

In other directions, we hear much of a recently discovered and much elaborated antagonism between labour and what is called capital: as if it were possible that elements should be antagonistic, which are essential to each other's existence. It seems strange, since labour has been the condition of human life ever since the creation, that the science necessary to the adjustment

of its relations should have been born so late. It is to be regretted, now that it has come, that its propositions are not more easily understood.

Elsewhere, the inequality in the distribution of property is the subject of debate; the condition of the rich and of the poor is vividly contrasted, and many theories of legislation to counteract and equalize it are brought forward.

As civilization has advanced, and the field of human exertion has grown wider, as the means for the creation of wealth have increased, and the ability of mankind has been more and more turned to its acquisition, inequalities in its possession and in its display have become more numerous and more conspicuous, and the line between the rich and the poor has been more

sharply drawn, that was plain enough before. That this disparity should be removed by legislation, that it should become the office of the law to secure in some way a more equal distribution, and to enrich poverty by diminishing wealth, that the labourer should somehow come to receive more than his hire, and that the unfortunate, the idle, and the prodigal should share the prosperity they have not created, are specious propositions, eagerly listened to by those whom they promise to benefit. They afford very facile material to philosophers who are more gifted in speech than in clear understanding, and to demagogues who wish to excite the multitude, rather than to instruct them.

One among many of the favourite

methods by which reformers of this sort purpose to equalize property, is to bring to bear upon those whom prosperity has rendered obnoxious, the power of excessive and unequal taxation. And under the cover of this abuse, to take from the rich for the benefit of the poor.

But it would be foreign to my purpose to discuss in detail, or even to attempt to state all the forms which these theories assume in different countries, and under varying circumstances. They have made noise enough to be sufficiently well known. Their existence cannot be disregarded. There is in the air of the world just now, a vague idea that the relations of this subject are to undergo some change, which no one is able clearly to describe.

There is a feeling of indefinable alarm on the one hand, and of equally indefinable expectation on the other.

Most of the schemes I have alluded to, had their birth place on the continent of Europe. They are not the natural growth of countries where the common law prevails. But their authors avail themselves of the freedom of speech and of the press which is accorded in those countries, to attempt to propagate these ideas.

Under whatever ingenious form they are produced, they all tend to the same result: to invade the right of private property as heretofore secured, and to take by law from one man in order to give to another. To enable one set of men to get something from another, without

giving anything in return. In place of the steadfast and uniform protection afforded to every man by the law of the land, in his lawfully acquired possessions, to substitute some new method of discriminating justice in the distribution of the things of this world, whereby the rich should become poorer, and the poor become richer. It is not in this succinct form that these propositions are usually put forth by their advocates. When established principles are attacked, a new vocabulary is always invented, not to convey, but to conceal the meaning of its authors. When stripped of their verbiage, and pursued to exact results, the conclusion I have stated is that at which all such proposals arrive. And wherever and whenever they

are brought forward, they are accompanied by what is indeed their necessary concomitant, an effort to enforce them by creating political parties formed upon class lines, and by stimulating the poor to organize against the rich.

When we regard the extent to which poverty, misfortune, and distress prevail, under the best conditions that can be devised for their relief, it is impossible to refuse attention and sympathy to any scheme of social or legislative improvement, which promises to lighten their burden. I am far from intending to say that nothing can be done in this direction, by wise and judicious legislation. Much indeed has already been done, and it is but fair to hope that more will yet be effected.

Upon this point I especially desire not to be misunderstood. I am dealing with the right of property; I am not justifying its abuse. The fundamental law that secures its title, does not place the owner of it beyond the power of legislation, in many particulars connected with its use and its disposition, in respect to which society has its just claims. The law of the land does not contemplate its subject as an isolated individual, having personal rights that carry no corresponding obligations. He is but one member of the great commonwealth, in which all its people are entitled to equal consideration with himself. Up to a certain point, restrictions and limitations touching the right of property are not only allowable but necessary. It

may undoubtedly be dealt with, in respect to the form it assumes, as well as the manner in which it is enjoyed, when such regulation is necessary to the common interest. That individual or corporate property may be taken by government, when the publick necessity requires it, if just compensation is made for it, is one of the conditions upon which it is held and protected. In the United States constitution this condition is expressly declared. Such a proceeding is not a deprivation of property, but is only turning it into money. What constitutes public necessity is a question of grave importance, the decision of which may vary widely in different countries, and under different circumstances. I do not undertake to discuss it; far

less to anticipate what discussion it may require hereafter.

But to regulate property for the general good is one thing, to take it away is quite another. The fatal objection to the schemes I have referred to, is that they strike at its title, not at its form or its use. Under colour and doubtless sometimes with the real hope of bringing about an apparent justice—attractive in theory, impossible in fact—they all attempt, under whatever disguise, what in plain English amounts to this, to benefit one part of the community, by the robbery of another.

Such theories transgress the scope and province of law. There is a limit to the field of civil authority, within which it is indispensable, outside

of which it is intolerable. In its province it is supreme; beyond that, all attempts to force it must inevitably fail.

The idea is too common, that in legislation is to be found the panacea for all sorrow, and the relief for all misfortune. Even under free government, the world may be governed too much. Liberty, to be worthy of the name, should be restrained no farther than is necessary for its preservation. When the efficacy of law is exhausted, a large field of human conduct still remains, over which sound policy, enlightened morality, and the precepts of Christianity exercise the only control that is possible.

Invasion of the right of property

defeats also the equality of the law. Equality of rights is ordained of God. Inequality of condition is equally ordained. The one may be temporarily broken down; the other can never be overcome. It has pleased Providence to accord to but few the capacity to accumulate or to preserve property, to any great extent. It is a beneficent provision that the mass of mankind must live by their industry. It is a blessing, not a curse, that by the sweat of the brow we shall eat bread. It would be an unhappy world if amusement were the sole employment of its inhabitants. Inequality of acquisition always has been and always must be great, under whatever conditions of government. The principle of law therefore, which

secures to every man his own, while it maintains equal rights, cannot prevent most unequal results. There is always to be seen, on the one hand, distress we should gladly alleviate ; on the other, examples of excessive accumulation, of legal rights pushed to a hard extremity, of wealth uncharitably and unwisely applied, which in the individual cases we could wish were made impossible.

The same result attends the observance of the other principal rights secured by the law of the land. There are those in every community whose death or whose perpetual imprisonment would be a gain to society. But the equal protection must nevertheless be afforded to their lives and liberty, that is accorded to the benefactor of his

race. When the barrier of perfect security to the natural rights, to all men alike, is once removed, when these rights or either of them come to be held, not as absolute, but as subject in any degree whatever to the discretion of governmental power, there is no limit and no criterion that can be prescribed to that discretion. The first innovation is regarded as establishing its own propriety; that it has failed to answer its purpose, as it necessarily must fail, is taken to show that further experiments in the same direction must be attempted. Oppression of the poor for the benefit of the rich is a form of tyranny that is promptly recognized and condemned. But it is not so easy for some to perceive, that the

oppression of the rich for the supposed benefit of the poor, is equally in derogation of the principles of free government, and equally destructive in the end. All such experiments result in a warfare of classes. And in such a conflict, if carried out, whichever party prevails, free government is lost.

It is a grave error therefore, to believe that invasion of the right of property is for the benefit of the poor. The result is precisely the reverse. Free government, while unquestionably the highest and best civil and social condition for all who live under it, is especially and above all to the advantage of the general mass of men. It is in itself the elevation of the common people, and their emancipation from the tyranny of an

oligarchy. Since the principles of civil and religious liberty were established in England, the advance of civilization and prosperity has been greater than in all the history that had gone before. The improvement in the condition of the body of the people in all respects, has been steady and rapid.

When free government is lost by being allowed to degenerate into class government, the strong are likely to take care of themselves. It is the weak who suffer. The wealthy may be made the first and most conspicuous sufferers. But they will be by no means the principal victims in the general catastrophe. Liberty is not the privilege of the strong; it is the protection of the weak.

Nor is it the rich who are chiefly interested in the maintenance of the right of property. The less a man has, if he has anything, the more important it is to him that it should be safe. No property can be safe, when once the general security that protects all alike is lost. It is a delusion to imagine that it can be impaired to a certain extent, and maintained for the residue; that it may be made the subject of a fluctuating protection on the lines of moral justice, at the will of the governing power. There can be no middle ground. Either the title to lawful property must be universally protected, or it ceases to be protected at all.

That it is not the few but the many who are most largely benefitted by the

protection of the right of property, has been strikingly demonstrated in the history of the United States. Under the American constitution, as I shall point out hereafter, extraordinary safeguards have been devised, which have thus far rendered that protection absolute and certain.

The result has been the most general distribution of property, and the largest individual prosperity that have ever been known in civilized life. The glory of America has been well said to be in the homes of its people. Millions of those homes, the property of their occupants, held in a security of tenure hitherto unquestionable, stretch across the continent from sea to sea. It is true, that under the same equal protection the millionaire enjoys and

increases his accumulations, sometimes ill-gotten, sometimes ill-spent. But to assail him by impairing the general security to property that the constitution affords, would be like trying to stay the rain from Heaven, because it falls upon the unjust as well as upon the just. Or like impugning the beneficence of the Almighty, because under its impartial rule the wicked man still flourishes in his time.

The material question, under all forms of free government established by the English-speaking race, is how shall this law of the land on which they depend, be best maintained. It is idle to deny that it is insidiously and speciously threatened in many quarters, in the manner I have pointed out.

In the constitution of the United States, the political system of Great Britain has been largely followed. Nearly all the great features which give it character are substantially adopted, except that of an hereditary executive, and an hereditary upper house. But in the provision made for the security of personal rights against interference by the government, exists a difference between the two systems, less conspicuous, but really far more material than any other.

The American constitution declares that "no man shall be deprived of life, liberty or property, without due process of law." And that "no state shall pass any law impairing the obligation of contracts." The words,

"due process of law," have been held, both in England and America, to be precisely equivalent in their significance to the phrase in Magna Charta, "the law of the land." The provision is therefore the same under both systems; the difference is in the manner of its enforcement.

Under the British constitution, Parliament is supreme; and, although bound to respect and maintain the personal rights, is its own judge at all times of what constitutes their infringement. The American Congress and the legislatures of the states are equally bound to observe constitutional limits in legislation, and to pass no law that would in any respect infringe them. But if by misapprehension of what those limits require, or the pres-

sure of party or political excitement, legislation should take place which transgresses constitutional provisions, the courts of the country, and in the last resort, the Supreme Court of the United States, which is the highest of all, afford protection and redress against such legislation to any person who may be affected by it. An act passed in contravention of this or any other constitutional safeguard, is held to be void, and constitutes no justification to the officer who attempts to enforce it.

The power of judicial relief against unconstitutional laws, is not affirmatively conferred by the constitution. The language I have quoted is all that is contained in that instrument on the subject. The jurisdiction is deduced

by an inevitable logic, in the construction that has been given to the constitution, from the restrictions which it imposes upon legislative authority.

To the clause prohibiting the passage of laws impairing the obligation of a contract, such an interpretation has been given in a long course of decisions by the Supreme Court, that no lawful contract can be affected in any particular of its obligation, or in the right to have it enforced by proper judicial proceeding, by legislation subsequent to the contract. And though this provision applies only to the action of the state legislatures, and not to that of Congress, the cases are very few in which Congress can legislate at all upon matters of private contract, which are left principally to

be regulated by the law of the states. No instance of legislation by that body, tending to impair the obligation of contracts, has ever occurred.

The consequence is, that not only life and liberty, but property, individual or corporate, in every form in which it can lawfully exist in the United States, have been made doubly secure against invasion, under any form or pretence of governmental authority, not warranted by the law of the land. First, by the obligation resting upon the legislative power, to observe constitutional boundaries; and secondly, by the authority in the courts of justice, if those limits are exceeded by legislation, or by executive act, to afford a complete relief. It is beyond question, that these salutary

and effectual provisions for the protection of the right of property, and the confidence they have inspired, have largely contributed to the material growth and prosperity of the United States. Whether they can be hereafter successfully evaded, remains to be seen.

But in pointing out the success which has thus far attended in America, the system of judicial protection of constitutional rights, I am not to be understood as claiming for it a superiority over that which prevails in Great Britain. I do not assume to contrast the single century in which the American government has maintained successfully these great rights, with the many centuries in which with equal success, they have been maintained here. Nothing in the history

of the British government seems to indicate the necessity for additional protection in this direction. The liberty that has been preserved here so long, may be reasonably expected to continue as well secured, under the same system, and by the same means. Political institutions, to be successful, must be the fruit of a natural growth, planted and nurtured by necessity. They can never be arbitrarily imposed, or created full grown. They come with time, and adapt themselves to the soil upon which they arise. That a system has been fortunate in one country, is but an indifferent argument in favour of an attempt to engraft it upon another. Transfusion of blood is a questionable expedient, and the indigenous tree flourishes where the exotic perishes.

I have referred to the American experiment in this feature of government, rather as an illustration than as an example. It certainly has the advantage of removing from the sphere of political controversy, and from the action of popular caprice, and of placing under the uniform and permanent rules of jurisprudence, the preservation of those fundamental personal rights which under all political changes and chances remain the same. American experience has thus far shown, that the assumption of arbitrary power by the executive has not proved the danger to free institutions which theorists anticipated. The concentration of power has tended steadily towards the legislative branch of the government. It is from that branch,

not from the executive, that protection has been principally found necessary. What might have occurred in that country in some periods of its short history, if the constitutional restriction I have quoted had not existed, is only a subject of speculation. The frequency with which it has been invoked, has demonstrated its importance.

But no system, however elaborate, and no contrivance, however ingenious, can be finally effectual for the preservation of personal liberty, without the constant assistance of an enlightened, healthy, and vigorous public sentiment. Law, however fundamental, is but the reflex of public opinion, and in the long run in a free country must be maintained by that opinion, or must perish. Constitutions, however

guarded, cannot provide for their own immortality. The principles of civil liberty had their origin in the convictions of mankind, and have been brought to perfection by the devotion of the race in which they started. Under them the Anglo-Saxon people has become what it is, and by that people they have been made what they are. It is a hackneyed saying, but hackneyed because it is constantly true, that "eternal vigilance is the price of liberty." But vigilance to be of any avail must be intelligent as well as active. From whom is it required? From whom is it to be reasonably expected? Who are the true and natural guardians of the law of the land? Manifestly those who are best qualified to understand it, and best

capable of patriotic and disinterested conduct. It was the Barons of England who obtained Magna Charta. It has been the best life of Great Britain that from century to century, from generation to generation, in many a crisis, by many a victory, not less of peace than of war, has maintained inviolate its great principles. No demagogue, no self-seeker, no man who "follows for a reward," has ever struck an effectual blow for liberty, or has advanced the cause of human freedom a single step. The name of liberty is always in the mouths of such men, but they are its enemies, not its friends. They have retarded and disgraced it, but they have never done it any good. They are only camp followers, not soldiers, in the great march,

destined we hope to overcome the world. Liberty, everywhere and always, has been maintained by the best class of its subjects. I use the term in no conventional sense. I understand the best class to be that which is composed of the best people. They may be found in the peerage; they may rise from humble life; their distinction is in quality, not in rank. It was the best class of Americans who took up the great quarrel on the far side of the Atlantic, carried through the American revolution, ordained and set fast the constitution of the United States, and have upheld it ever since. It is in that class everywhere, in all countries, under all free systems of government, that the law of the land, which is liberty, must find its defenders. Not

only against its enemies, but against being wounded in the house of its friends. Friends too ignorant sometimes to perceive that a blow aimed at the head is equally a blow at the heart; that liberty is equality of rights, which no man is too high and no man too low to share in; and that when that equality is invaded, from whatever specious motive, or upon whatever promise of temporary advantage, liberty comes to an end; and the old story of the strong against the weak, of which the world was so long weary, begins to be rehearsed again.

For the maintenance of ancient and honest constitutional principles, there is necessary the attainment by intelligent and thoughtful men, of a clear comprehension of the real nature,

extent, and value of those principles. A comprehension capable of penetrating all the forms of sophistry and of subterfuge under which they are assailed, and all the plausible excuses by which the movement is concealed. Where there is one man who is willing to lead such an attack, there are ten who are unable to perceive that it is taking place.

A true understanding of the scope of constitutional law, excludes it altogether from the field of political contention. There always will be, and there always should be political parties in a free country. There will never fail to be found room enough for a wide and sincere difference of opinion on the questions arising between them. But the law of the land is not the

property of a party, nor the just subject of party dispute. All parties meet on it and start from it as a common ground, and all are equally interested in its preservation. What free government should do in the various exigencies and emergencies of the national life, is often a grave question. Whether free government shall continue to exist, can never be a question in the British or American mind.

Nothing likely to occur at this day in any such government, is so much to be dreaded, and so necessary to be resisted, as movements like those I have referred to, towards the organization of parties upon the lines of personal condition, and the marshalling of one class to make war upon another. Political parties have been hitherto composed of

all classes. Divisions have been upon the lines of opinion, and not upon those of social distinction. It is only recently that these movements have been seriously set on foot in various directions, and especially in America. If started in one free country, they endanger all. I have tried to point out how dangerous to free government such a warfare must be, if allowed to go on to its legitimate conclusion. It is not merely the fortune of the conflict that is to be feared, it is the conflict itself. It is the shortest and most direct road to the resumption of the reign of arbitrary power. The man who inaugurates or encourages such a warfare, is a greater, because a more efficient enemy to liberty, than if he attempted to set up the worst form of

despotism with which humanity was ever afflicted.

It needs to be brought home clearly to those to whom ignorance and distress make such proposals attractive, how cruel is the wrong to themselves that the success of them would bring to pass. How inevitably they must be the sufferers, when the hands of one class are thus turned against another, and what should be a community of interest is divided against itself. How certainly such schemes paralyze the industries and business, upon which all self-supporting men depend. They are capable of understanding this, if it is set before them in the right way.

But the adjuration against a conflict of classes does not address itself, as too many seem to suppose, to the less-

fortunate class alone. It appeals to them undoubtedly; but it appeals with greater force to the higher and better-educated order in society. To avert an impending war, concessions from both sides are generally necessary. But they come, in the first instance, with a better grace and a stronger force, from the side that can best afford them. It is easier sometimes to disarm the demagogue, by mitigating the grievances that make up his material, than it is to refute him before the audiences where he has sway. The common law has its letter as well as its spirit. The one gives, as we have seen, an absolute protection to absolute rights. The other teaches that such protection is a weapon of defence, not of aggression, most effec-

tive when used with forbearance and moderation. It is not always necessary or wise to push even just claims to their extremity.

The gradual but steady improvement of the general mass of mankind in intelligence, in self respect, in social refinements, and in the capacity to enjoy them, is the natural outgrowth of civil liberty, and of that law of the land which starts from the recognition of equal rights. It follows in the footsteps of free government wherever they go. Its tendency must be accepted as one of the great forces of the age, and at the same time one of the most signal blessings to mankind that freedom has conferred. It is not for us to say how much may come of it hereafter. It is but

